CURTIS WHEELER

IBLA 82-5 Decided March 24, 1982

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-73161 for certain lands within a reservoir right-of-way.

Affirmed as modified.

1. Act of May 21, 1930 -- Mineral Leasing Act: Lands Subject To -- Oil and Gas Leases: Applications: 640-acre Limitation -- Oil and Gas Leases: Rights-of-Way Leases

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

R. C. Beveridge, 50 IBLA 173 (1980);
Alice Hays, 36 IBLA 313 (1978); and
Republic Oil and Mining Co., 35 IBLA 212 (1978), distinguished.

APPEARANCES: Curtis Wheeler, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Curtis Wheeler appeals from the decision of August 26, 1981, by which the Wyoming State Office of the Bureau of Land Management (BLM) rejected his

noncompetitive oil and gas lease offer W 73161, filed pursuant to the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 226(c) (1976). The lands described in the offer were the W 1/2 SW 1/4, W 1/2 SE 1/4 SW 1/4, sec. 32, T. 18 N., R. 120 W., sixth principal meridian.

All of the land so described is within reservoir right-of-way Wyoming 0175604. In addition, there is a tract of about 10 acres in the NE 1/4 SE 1/4, sec. 32, which comprises the remainder of the reservoir right-of-way, but which was not included in Wheeler's offer.

The BLM decision rejected the offer for two reasons. First, the decision correctly pointed out that lands under reservoir rights-of-way may be leased only under authority of the Act of May 21, 1930; 30 U.S.C. §§ 301-306 (1976). Under the provisions of that statute, leasing of land under a right-of-way is restricted to the holder of that right-of-way or his assignee, or to an adjoining owner or his lessee under an agreement to pay compensatory royalty. 30 U.S.C. § 301 (1976); 43 CFR 3100.0-3(d)(1); R. C. Beveridge, 50 IBLA 173 (1980). The right-of-way in question was created by a grant dated July 16, 1961, and is held by the State of Utah, and Wheeler did not allege that he is qualified in any capacity under the statute to hold an oil and gas lease for the land applied for. Therefore, his application was properly rejected as a matter of law.

The BLM decision also noted that Wheeler's offer was deficient in that it was for only 100 acres although there is other land "available," if any of the land is, referring to that part of the NE 1/4 SW 1/4, sec. 32, which is part of the right-of-way but was not included in Wheeler's lease offer. Therefore, BLM held, the offer was violative of the 640-acre limitation rule expressed in 43 CFR 3110.1-3, as it did not fall within either of the exceptions to that rule. BLM erred in so holding. The regulation is concerned with public domain lands which are "available for leasing under the Act." The "Act," in that context, refers to the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 181 (1976); not to the Act of May 21, 1930, supra, the only authority by which lands in rights-of-way can be leased. Since the lands at issue are not "available for leasing under the [Mineral Leasing] Act," the 640-acre limitation is not applicable. See A. A. McGregor, 18 IBLA 74, 81 (1974). Nevertheless, an oil and gas lease offer which includes only 100 acres of a 110-acre right-of-way, and which omits an irregular 10-acre gore of land, is properly rejected in the exercise of the delegated discretionary authority of the Secretary of the Interior. Thus, even had Wheeler filed his offer under the appropriate statute and shown himself to be a person qualified to receive the lease, which he did not do, it still would have been correct for BLM to reject the offer.

Following BLM's rejection of his offer, Wheeler sought to "amend" it by filing another offer under the Mineral Leasing Act of 1920, supra, adding the 10-acre tract in the NE 1/4 SW 1/4 of sec. 32 which was part of the right-of-way but omitted from his initial offer. The additional 10-acre tract was not legally described by the offer, but was crudely sketched in a hand-drawn plat on the face of the offer. The offer was still filed under the wrong statute, and Wheeler still failed to allege and evince that he is a person qualified

to lease this land under the 1930 Act, supra. He accompanied the filing of this "amended" offer with a letter requesting that it be treated as an appeal to this Board in the event the offer was unacceptable to BLM. That letter was regarded as a notice of appeal by BLM, which forwarded the record to this Board.

The offer, including the attempted "amendment," was properly rejected because it was not filed under the 1930 Act, supra; because Wheeler has not shown that he is qualified under that Act and the applicable regulations; and because of the deficient description and area of the lands included in the offer; all as discussed above.

BLM misapplied the 640-acre limitation rule in this instance, as previously discussed. However, because other decisions involving oil and gas lease offers which included lands within rights-of-way have alluded to the 640-acre limitation, we wish to define the distinction between those cases and this one. R. C. Beveridge, supra; Alice Hays, 36 IBLA 313 (1978), and Republic Oil and Mining Co., 35 IBLA 212 (1978), each involved oil and gas lease offers pursuant to the Mineral Leasing Act of 1920, supra, which included both lands within a right-of-way and public domain lands outside the right-of-way boundaries. The concern for the 640-acre limitation rule in those cases focused on whether the rule was satisfied as to the lands remaining in the offer and "available" under the 1920 Mineral Leasing Act after the lands within the right-of-way were excluded. By contrast, in the instant case all of the lands in Wheeler's offer were within the right-of-way, and thus were not "available" under the 1920 Mineral Leasing Act and not subject to the 640-acre limitation rule.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as herein modified.

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Edward W. Stuebing
Administrative Judge

We concur:

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C. Randall Grant, Jr.
Administrative Judge

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Bruce R. Harris
Administrative Judge